

### REMARKS

Claims 1, 3-14 and 16-31 are pending in the application. Applicants' attorney thanks the Examiner for his response to prior arguments and intends to reply in kind as follows.

Claims 1, 3-6, 8, 9, 11-14, 16-19, 21, 22 and 24-31 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Ellis et al. (U.S. Publication No. 2003/0149988).

In terms of the English language, generally there are three tenses (future, present and past) in which to state activity. Here an video-audio data can be recited as "to be recorded" (future tense), "being recorded" or "recording", ( present tense) and "recorded" (past tense). The claims recite a method with a step of recording. As a substep to (part of) the recording step, the claims recite "said step of recording including providing a searchable index". That is, during the step of recording, the claimed invention provides a searchable index. That provided searchable index (during the step of recording) covers recorded streamed video-audio data and streamed video-audio data being recorded (in the act of being recorded).

So, for the Office Action at hand to say that "the claims as presented do not necessarily require the specific timing or when the step of providing a searchable index for a program being recorded need be performed..." (page 2, paragraph 2 of the Office Action) is misguided. The plain English language interpretation of the noted claim language would not support the argument of the Office Action at hand.

However, in an abundance of clarity, base Claims 1, 14 and 28 have now been amended to state that (or similar language) "...the step of recording including providing during recording a searchable index to (i) the recorded streamed video-audio data and to (ii) the streamed video-audio data being recorded such that the searchable index is provided during recording of streamed video-audio data as it is being recorded..."

With this amendment the claimed invention is patentably distinguished over Ellis et al. where the cited reference does not imply, suggest or otherwise disclose the providing of a searchable index during recording of streamed video-audio data as it is being recorded. Claims 3-6, 8, 9, 11-13, 16-19, 21, 22, 24-27 and 29-31 are dependent on one of base Claims 1, 14 and 28 and thus include the patentably distinguishing claim terms. Accordingly, the § 102 rejection of these claims is believed to be overcome and withdrawal of the rejection is respectfully requested.

Claims 7, 10, 20 and 23 have been rejected under 35 U.S.C. § 103 as being unpatentable over Ellis et al. in view of Browne et al. (WO 92/22983).

Claims 7, 10 and 20 and 23 depend from base Claims 1 and 14 respectively. As discussed above, Ellis et al. neither disclose nor suggest Applicants' invention of base Claims 1 and 14 which are directed to capturing video and audio (i.e., multimedia) content streamed over the global computer Internet instead of capturing broadcast TV and providing during recording a searchable index to the recorded streamed video-audio data as well as the streamed video-audio data being recorded (i.e., as it is being recorded).

Browne et al. disclose a large capacity, random access, multisource audio and video recorder player which can receive a plurality of simultaneous input signals and which allows the user to view and/or to record selected ones of the plurality of input signals. However, there is no disclosure or suggestion in Browne et al. of Applicants' invention for providing to a user desired video and audio (multimedia) content streamed over the global computer Internet, including a searchable index of the subject content during recording of content. Thus the second reference, Browne et al., does not remedy the deficiencies of Ellis et al.

Therefore, the subject matter of Claims 7, 10, 20 and 23 is not made obvious in view of Ellis and Browne taken either separately or in any combination. Thus, Applicants respectfully request reconsideration of the claims and withdrawal of the § 103 rejection.

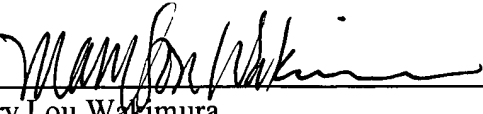
### **CONCLUSION**

In view of the above amendments and remarks, it is believed that all claims (Claims 1, 3-14 and 16-31) are in condition for allowance, and it is respectfully requested that the application

be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By   
Mary Lou Wakimura  
Registration No. 31,804  
Telephone: (978) 341-0036  
Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 11-7-05